

REPRESENTATIVE FOR PETITIONER: Paul M. Jones, Paul Jones Law, LLC

REPRESENTATIVE FOR RESPONDENT: Jess R. Gastineau, Office of Corporation Counsel

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Sensient Flavors, LLC,	)	Petition:	49-900-11-1-7-01075-17
	)		49-900-12-1-7-01117-17
Petitioner,	)		
	)	Parcel No.:	I502823
v.	)		
	)	County:	Marion
Marion County Assessor,	)		
	)	Assessment Years:	2011-2012
Respondent.	)		

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**March 5, 2020**

**FINAL DETERMINATION NUNC PRO TUNC**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Sensient Flavors, LLC (“Sensient”) filed personal property returns for both years under appeal. After auditing both years, the Assessor determined that Sensient understated the assessed value of its personal property for each year. Sensient does not dispute this, but instead argues that the audits were untimely under Indiana Code § 6-1.1-16-1 because the audits were more than five months after the returns were filed, the returns substantially complied with the law, and the returns were not filed with an intent to evade property taxes. The Assessor disagrees. Both parties filed for summary judgment. Because Sensient’s returns only omitted a small portion of its costs, and there is no evidence of any other problems with the returns, we find they did substantially comply with the law. Thus, we find for Sensient.

## PROCEDURAL HISTORY

2. Sensient filed personal property returns for the 2011 and 2012 assessment years. After an audit, the Marion County Assessor issued its Form 113 notices of increased assessment for both years on October 11, 2013. Sensient timely appealed both years.
3. The Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 115 notices denying the appeals on June 30, 2017. Sensient timely appealed to the Board.
4. Both parties filed motions for summary judgment. The Assessor did not designate any evidence in support of his motion. Sensient designated the following evidence:
  - Petitioner’s Exhibit A: Marion County Assessor’s Audit Report dated October 11, 2013,
  - Petitioner’s Exhibit B: DLGF Personal Property Audit Presentation (August 2018),
  - Petitioner’s Exhibit C: DLGF Personal Property Audit Resource Packet.
5. The Parties did not request a hearing on their respective motions. The Board did not inspect the subject property.
6. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; and (2) all orders and notices issued by the Board or our designated Administrative Law Judge.

## FINDINGS OF FACT

7. There is no dispute that Sensient timely filed personal property returns for the 2011 and 2012 assessments years reporting assessed values of \$9,445,160 and \$9,753,060 respectively. The returns showed total personal property costs of:

Year	Total Costs (Reported)
2011	\$30,707,691
2012	\$30,819,592

After the audit, the Assessor determined the actual costs were:

Year	Total Costs (Actual)
2011	\$31,186,939
2012	\$31,036,165

The variance was due to omitted assets including “labor & engineering costs, piping, and electrical upgrades.” The Assessor concedes the difference in cost is less than 5%.

Based on these omitted costs, the Assessor determined actual assessed values of \$9,543,710 for 2011 and \$9,863,260 for 2012. The audit was issued October 11, 2013.

*Pet’r Ex. A; Resp’t Motion for Summary Judgment.*

### CONCLUSIONS OF LAW

8. Both parties have filed motions for summary judgment. Our procedural rules allow parties to move for summary judgment “pursuant to the Indiana Rules of Trial Procedure.” 52 IAC § 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Cnty. Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). *Id.* In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).
9. Indiana’s personal property tax system is a self-assessment system. During the years at issue, every person owning, holding, possessing, or controlling business personal property with a tax situs in Indiana on March 1 of a year was required to file a personal property tax return. *See* I.C. § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the

person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. I.C. § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a).

10. Cost is the starting point for determining true tax value for personal property. *See* 50 IAC 4.2-4-2. Generally, the cost of personal property is “the total amount reflected on the books and records of the taxpayer as of the assessment date,” plus direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. *Id.* There are exceptions to that rule for, among other things, property that is fully depreciated, retired, or nominally valued. *See* 50 IAC 4.2-4-3.
11. To compute true tax value, a taxpayer must first adjust the cost for any depreciable personal property to its tax basis as defined in the Internal Revenue Code (unadjusted by Sections 167 (depreciation) and 179 (expense deduction) or any credits that diminished its cost basis) if the property's cost per books is different from its tax basis. 50 IAC 4.2-4-4. Each piece of property is then segregated into one of the pools based on its depreciable life for federal income tax purposes. 50 IAC 4.2-4-5. The adjusted cost of each year's acquisitions falling within a given pool is then multiplied by the percentage factor corresponding with that pool's year of acquisition from a table incorporated into the Department of Local Government Finance's (“DLGF”) regulations. 50 IAC 4.2-4-7. The resulting sum is the true tax value of the personal property, which automatically reflects all adjustments for Indiana property tax purposes, except abnormal obsolescence. *Id.* With a few exceptions, the total valuation of a taxpayer's personal property cannot be less than 30% of adjusted cost, even if applying the depreciation pools would indicate a lower value. 50 IAC 4.2-4-9.
12. Although personal property is self reported, Assessors have the ability to audit personal property returns to ensure compliance. But there are strict time limits on the Assessor's ability to change a taxpayer's personal property return before it becomes final. Indiana Code § 6-1.1-16-1 provides, in relevant part:

(a) Except as provided in section 2 [IC 6-1.1-16-2] of this chapter, an assessing official or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following periods:

....

(2) A county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:

- (A) October 30 of the year for which the assessment is made; or
- (B) five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property tax return.

....

(b) Except as provided in section 2 of this chapter, if an assessing official or a county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final.

....

- (d) This section does not apply if the taxpayer:
- (1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance; or
  - (2) files a fraudulent personal property return with the intent to evade the payment of property taxes. . . .

Ind. Code § 6-1.1-16-1.

- 13. In this case, because the deadlines in I.C. § 6-1.1-16-1(a)(2) had passed, the Assessor only would be permitted to change the assessments under I.C. § 6-1.1-16-1(d). There is no evidence that the returns were filed with the intent to evade property taxes. Thus, we are left to determine whether each return “substantially complies” with the law and the regulations of the DLGF.
  
- 14. The Indiana Tax Court addressed the concept of substantial compliance in *Lake County Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248 (Ind. Tax Ct. 2010). In that case, the DLGF intervened to provide a memorandum in which it interpreted substantial

compliance:

[s]ubstantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met. *Id. at 1251.*

15. The Tax Court adopted that interpretation. In February of 2010, before the Tax Court issued the *Amoco Sulfur* decision, but after the tax years at issue in that case, the DLGF enacted 50 IAC 4.2-1-1.1(j) which states:

- (j) "Nonsubstantial compliance" means a tax return that:
- (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
  - (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
  - (3) is filed with the intent to evade personal property taxes or assessment.

We now examine whether Sensient's returns substantially complied with the applicable laws and regulations.

16. The audits show that Sensient omitted only a small portion of its actual costs from its returns. The Assessor admits this omission was less than 5% of total costs. Thus, it falls outside of the definition of nonsubstantial compliance found in 50 IAC 4.2-1-1.1(j). The Assessor argues that this definition should not control because:

The Indiana Tax Court rejected arguments to adopt a measure of substantial compliance based on "a percentage of the property's overall assessed value," explaining that the "amount in controversy" argument lacked ascertainable standards." [*Amoco Sulfur* at 155 n.13.] *Resp't Br. at 4.*

17. In fact, this is a mischaracterization of the Tax Court's decision. While the Tax Court did reject an argument that substantial compliance should be based on the amount of tax dollars at issue, the Court's reference to a "percentage of the property's overall assessed value" was merely speculation as to one possible way an "amount in controversy" could be measured. Moreover, the Court goes on to note that the power to create such a

standard lies with the General Assembly. *Id. Amoco Sulfur* in no way prohibits either the General Assembly or the DLGF from adopting a standard of nonsubstantial compliance based on a percentage of total costs. The Assessor’s argument on this point is not well taken.<sup>1</sup>

18. Thus, we find it instructive that Sensient’s returns do not meet the DLGF’s definition of nonsubstantial compliance. But we note that the DLGF regulation defines “nonsubstantial compliance” rather than the term “substantially complies” which is found in the statute. These are not identical, and we can posit situations in which a return could fall outside the definition of “nonsubstantial compliance” but still fail to substantially comply under the statute. But the Assessor has failed to advance any cogent argument on this point. The Assessor attempts to rely on a misguided argument that because Sensient stated on its Form 131 petitions that it was relying on the DLGF regulation, the Assessor should be entitled to judgment as a matter of law if that regulation does not control. The Assessor points to no authority for this assertion, and we reject it. The Assessor makes no argument whatsoever as to why Sensient’s returns did not substantially comply under I.C. § 6-1.1-16-1(d).
  
19. Indiana’s self–assessment system for personal property “relies on a taxpayer to fully and accurately report their taxable property.” *Amoco Sulfur* at 1252. But that does not necessarily mean that omitting property from a return means that return fails to substantially comply with the law. The Tax Court goes on to note, “substantial compliance, in itself, suggests something less than full compliance.” *Id.* at 1254. The General Assembly clearly intended to give some repose to taxpayers by limiting an Assessor’s ability to audit returns beyond the 5-month deadlines of I.C. § 6-1.1-16-1. In this case, the audits show that Sensient only omitted just over 1% of costs for each

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<sup>1</sup> In addition, the Assessor goes on to argue that the Board’s decision in the *Amoco Sulfur* case “rejected the 5% threshold substantial compliance argument.” *Resp’t Br. at 4*. Again, this is a mischaracterization of the decision. In that case, we considered a repealed regulation that was similar, but not identical, to 50 IAC 4.2-1-1.1(j). But we did not rely on the regulation because it was repealed. This is far afield from the Assessor’s assertion that we rejected the argument entirely.

assessment year, clearly falling outside the DLGF's definition of nonsubstantial compliance in 50 IAC 4.2-1-1.1(j). In addition, there is no evidence that the returns were filed with an intent to evade property taxes. Nor is there any evidence of other problems with Sensient's returns. Thus, under these facts, we find that Sensient's returns substantially complied with the law. For that reason, the returns were final when the Assessor failed to audit them within the time frame required by I.C. § 6-1.1-16-1(d).

### CONCLUSION

20. Sensient's returns substantially complied with the law. Thus, the reported assessed values of \$9,445,160 for 2011 and \$9,753,060 for 2012 were final when the deadlines of I.C. § 6-1.1-16-1(d) passed and the Assessor had not audited the returns. Sensient is entitled to judgment of a matter of law.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.